

***United States Court of Appeals
for the Second Circuit***

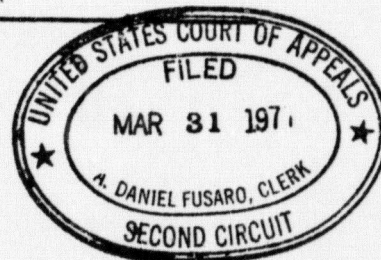


APPENDIX

77-7004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT
DOCKET NO. 75-125



LAWRENCE BATEMAN

VS

NORWICH UNIVERSITY, LORING E. HART,
INDIVIDUALLY AND AS PRESIDENT OF NORWICH
UNIVERSITY, JOHN B. WADSWORTH, JR., INDIVIDUALLY
AND AS COMMANDANT OF CADETS OF NORWICH
UNIVERSITY

APPENDIX

THOMAS F. HEILMANN, ESQUIRE
RICHARD E. DAVIS ASSOCIATES, INC.
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BARRE, VERMONT 05641

RELEVANT DOCKET ENTRIES

	<u>Date Filed</u>
1. Plaintiff's Verified Complaint	May 14, 1975
2. Answer of Defendants	May 15, 1975
3. Opinion and Order	March 17, 1976
4. Notice of Appeal	December 4, 1976
5. Agreed Statement as to the Record on Appeal	December 14, 1976

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

LAWRENCE BATEMAN

v.

NORWICH UNIVERSITY,
LORING E. HART, individually and as
President of Norwich University,
JOHN B. WADSWORTH, JR., individually
and as Commandant of Cadets of Norwich University

Civil Action

Docket No. _____

COMPLAINT

NOW COMES the plaintiff, LAWRENCE BATEMAN, and being duly sworn, says
by verified Complaint as follows:--

JURISDICTION

1. This is an action for injunctive relief, declaratory judgment and
damages. The Court is vested with jurisdiction over this action by virtue of
the following Constitutional Provisions and Acts of Congress:

- (a) 28 U.S.C. §1332(a) (1)
- (b) 42 U.S.C. §1983 and its jurisdictional
counterpart 28 U.S.C. §1343(3)
- (c) 42 U.S.C. §1985(3) and its jurisdictional
implementation 28 U.S.C. §1343(3)
- (d) The Fourteenth Amendment to the United States Constitution
and its jurisdictional implementation
28 U.S.C. §1331(a)
- (e) 28 U.S.C. §2202.

2. The amount in controversy is in excess of Ten Thousand (\$10,000)
Dollars exclusive of interest and costs.

PARTIES

3. Plaintiff Lawrence Bateman is a citizen and resident of the
Commonwealth of Massachusetts.

4. Defendant Norwich University is an institution organized and
existing under the Laws of the State of Vermont with its principal place of
business in Northfield, Vermont.

5. Defendants Hart and Wadsworth are citizens and residents of the
State of Vermont.

CAUSE OF ACTION

6. On or about September 1974 and continuing thereafter defendant
Norwich University entered into a contract with plaintiff whereby it agreed to

RICHARD E. DAVIS
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BARRE, VERMONT
05641

provide educational services to plaintiff in exchange for sums of money, which sums have been paid by plaintiff.

7. Under the terms of said contract defendant agreed that it would adhere to and abide by all the rules and regulations it promulgated for the education of students at said university.

8. Under the terms of said contract defendant agreed not to terminate said contract without just and sufficient cause.

9. The Norwich University Corp's Honor Committee is a disciplinary subdivision of the defendant university which is composed of senior members of the defendant university's student body. Said Honor Committee is elected exclusively by senior members of the student body.

10. Plaintiff, at all times material hereto was and is a student at Norwich University.

11. On or about April 10, 1975, plaintiff was charged by the Corps Honor Committee with an alleged honor violation, to wit, stealing gas from another cadet's car, and was afforded an opportunity for hearing to be held on April 15, 1975.

12. Plaintiff was specifically denied the right to legal counsel at said hearing held on April 15, 1975.

13. At said hearing the Honor Corps introduced against plaintiff a written statement by a security officer of the university. However, said officer was not present at said hearing and plaintiff was denied the right to cross-examine said security officer on the allegations against him contained in said statement.

14. At said hearing the individual whose gas was allegedly stolen testified that he was not missing any gas.

15. Among the 10 members of the Honor Corps Committee who sat in judgment of plaintiff was one Cadet Caffua.

16. Said Cadet Caffua testified against plaintiff at the hearing on April 15, 1975.

17. Despite the fact that Cadet Caffua was a witness against plaintiff, the defendant university permitted and allowed said Cadet Caffua to be present in closed deliberations of the Honor Corps when the decision to find plaintiff guilty was being made.

18. On April 15, 1975, plaintiff was found guilty by the Honor Committee and dismissal from the university was recommended.

19. Plaintiff appealed said decision by the Honor Committee and on April 16, 1975, defendant Wadsworth reviewed the Honor Committee's proceeding and reported to defendant Hart that the findings of guilty should be upheld and plaintiff should be dismissed.

20. Thereafter on or about April 23, 1975, plaintiff and defendant Hart entered into an agreement which permitted plaintiff to finish and complete said school year and under which plaintiff agreed to live off campus and to visit said campus to attend classes, meet with professors and use library facilities.

21. On or about May 9, 1975, plaintiff without any prior notice or hearing was informed by defendant Wadsworth that he had violated said agreement, would be immediately dismissed from said university, would not be permitted to take his final exams and would receive no credit for the second semester of his academic school year.

22. Plaintiff received no written notice of any of the charges and allegations that were made against him on May 9, 1975, by defendant Wadsworth and was not given the right to counsel.

23. Plaintiff was not provided with a hearing conforming to the provisions of the 14th Amendment to the U. S. Constitution concerning the charges made against him on May 9, 1975.

24. Plaintiff was not provided with an opportunity to confront and cross-examine witnesses adverse to him concerning his alleged violation of the agreement of April 23, 1975.

25. The final examinations in plaintiff's courses of study are scheduled to be held on May 14, 16, 17 and 20, 1975.

26. Plaintiff has been denied the right to take said final examinations and as a result thereof will not be able to finish said courses.

27. As a result of the actions of defendants as aforesaid plaintiff has lost substantial sums of money invested as tuition at said school, has lost the value of his educational work and effort, will be foreclosed from further educational pursuits, will lose standing and status in the community and has

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

LAWRENCE BATEMAN)

vs.)

NORWICH UNIVERSITY, LORING)
E. HART, individually and)
as President of Norwich)
University, JOHN B.)
WADSWORTH, JR.,)
individually and as)
Commandant of Cadets of)
Norwich University)

CIVIL ACTION
DOCKET NO. 75-125

ANSWER

NOW COME all of the defendants in the above matter, by and through their attorneys, Black and Plante, and answer the Plaintiff's Complaint as follows:

1. The defendants admit the allegations contained in paragraph 1 (a) of the Plaintiff's Complaint but deny all other allegations in paragraph 1.
2. The defendants deny that the amount in controversy is in excess of \$10,000.00.
3. The defendants are without sufficient information or belief as to the allegation contained in paragraph 3 of the Plaintiff's Complaint and therefore deny the same.
4. The defendants admit the allegations contained in paragraph 4 of Plaintiff's Complaint.
5. The defendants admit that the defendant Hart is a citizen of the State of Vermont but are without sufficient information or belief as to the citizenship of the defendant Wadsworth and therefore deny the same.
6. The defendants are without sufficient information to form a belief as to the allegations in paragraph 6 of Plaintiff's Complaint and therefore deny the same.
7. The defendants are without sufficient information to form a belief as to the allegations in paragraph 7 of Plaintiff's Complaint and therefore deny the same.

8. The defendants are without sufficient information to form a belief as to the allegations in paragraph 8 of Plaintiff's Complaint and therefore deny the same.

9. The defendants admit the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. The defendants admit that the plaintiff was a student at Norwich University from September 1974 until on or about April 15, 1975 when he was lawfully dismissed from the University.

11. The defendants admit the allegations contained in paragraph 11 of Plaintiff's Complaint.

12. The defendants admit the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. By way of answer to the allegations contained in paragraph 13 of Plaintiff's Complaint, the defendants say that the plaintiff voluntarily waived any and all rights to cross-examine said security officer, and further that said security officer was available for cross-examination if the plaintiff had desired to cross-examine said security officer.

14. The defendants are without sufficient information to form a belief as to the allegations contained in paragraph 14 of Plaintiff's Complaint and therefore the same are denied.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint are admitted.

16. The allegations contained in paragraph 16 of Plaintiff's Complaint are admitted.

17. By way of answer to paragraph 17 of Plaintiff's Complaint, the defendants say that Cadet Caffua did not vote or participate in any decision to find the plaintiff guilty.

18. The allegations contained in paragraph 18 of Plaintiff's Complaint are admitted.

19. The allegations contained in paragraph 19 of Plaintiff's Complaint are admitted.

20. The allegations contained in paragraph 20 of Plaintiff's Complaint are admitted.

21. By way of answer to paragraph 21 the defendants say that the plaintiff admitted that he had violated said agreement and that he was, in fact, afforded a hearing by the defendant Wadsworth.

22. The defendants are without sufficient information to form a belief as to the allegations contained in paragraph 22 of Plaintiff's Complaint and therefore deny the same.

23. By way of answer to the allegations contained in paragraph 23, the defendants say that the plaintiff was provided with a hearing in conformity to the provisions of the 14th Amendment to the U. S. Constitution.

24. By way of answer to the allegations contained in paragraph 24 of Plaintiff's Complaint, the defendants say that the plaintiff was allowed to confront and cross-examine all adverse witnesses to him that he desired to confront and cross-examine.

25. The allegations contained in paragraph 25 of Plaintiff's Complaint are admitted.

26. The allegations contained in paragraph 26 of Plaintiff's Complaint are denied.

27. The allegations contained in paragraph 27 of Plaintiff's Complaint are denied.

28. The allegations contained in paragraph 28 of Plaintiff's Complaint are denied.

29. The allegations contained in paragraph 29 of Plaintiff's Complaint are denied.

30. The allegations contained in paragraph 30 of Plaintiff's Complaint are denied.

WHEREFORE, the defendants, all of them, demand judgment on their behalf together with just interest and costs.

AFFIRMATIVE DEFENSES

1. The Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. The defendants never acted under color of any State law during the material times complained of in the Plaintiff's Complaint.
3. The plaintiff was afforded a full and fair hearing concerning all of the incidents complained of in his complaint.
4. The plaintiff failed to abide by the rules and regulations of Norwich University and that his failure to abide by said rules and regulations resulted in his lawful dismissal from the University.
5. Insufficiency of service of process.

COUNTERCLAIM

NOW COME the defendants in the above matter and counterclaim against the plaintiff, Lawrence Bateman, and in support of their counterclaim, the defendants state and allege as follows:

1. Reference is made to the defendants' answers to the Plaintiff's Complaint and said answers are re-alleged and incorporated herein.
2. The plaintiff, Lawrence Bateman, has failed to pay tuition in approximately the amount of \$650.00 for the services rendered and provided for by the University for the school year 1974 through 1975.

WHEREFORE, the defendants demand judgment, together with costs and interest, against the plaintiff Lawrence Bateman in the amount of \$650.00.

Dated at Hartford, Vermont, this 5 day of May, 1975.

NORWICH UNIVERSITY, LORING E. HART,
Individually and as President of
Norwich University, JOHN B. WADSWORTH,
JR., Individually and as Commandant of
Cadets of Norwich University

BY: /s/ Garfield H. Miller
Garfield H. Miller
Of the Law Firm of Black and Plante
Their Attorneys

LAW OFFICES
OF
BLACK & PLANTE
WHITE RIVER JUNCTION,
VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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DEPUTY CLERK

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Lawrence Bateman :
 :
 v. : Civil Action
 :
 Norwich University, Loring : File No. 75-125
 E. Hart, individually and :
 as President of Norwich :
 University, John B. Wadsworth, :
 Jr., individually and as :
 Commandant of Cadets of :
 Norwich University : :

OPINION AND ORDER

Norwich University is a four-year, private military college located in Northfield, Vermont. Lawrence Bateman, a student at Norwich during most of the 1974-75 school year, brings this suit challenging his expulsion from the University in May, 1975. The Senior Honor Committee of the Corps of Cadets found Bateman guilty of siphoning gas from a fellow student's car following an evidentiary hearing on April 15, 1975 and recommended dismissal. On April 16th, defendant Wadsworth, the Commandant of the Corps, reviewed the proceeding and reported to defendant Hart, the University President, that Bateman should be dismissed. One week later, on April 24, Hart and Bateman met. The two of them agreed that Bateman would be allowed to complete his course work for the semester if he would reside off campus and venture onto University grounds only to attend classes, consult with professors, or use the library. Bateman further agreed to

wear only civilian clothes and to sign in and out of the University at the guard room on these visits. On May 9, 1975 Wadsworth received a report that Bateman had been in the barracks or dormitory area. Three days later the commandant interviewed Bateman concerning the report, at which time plaintiff admitted he had been off limits. Wadsworth recommended to Hart that Bateman be dismissed from the University and after meeting with Bateman and later consulting with his own advisors, Hart adopted this recommendation on May 14, 1975.

Bateman commenced this action on the same day, May 14, claiming that his dismissal violated rights secured to him by the Fourteenth Amendment to the United States Constitution and by an implied "contract of enrollment" with Norwich University. Following commencement of the action, the University permitted Bateman to complete examinations in his courses for the spring semester but withheld the granting of academic credit for these courses, pending the outcome of this suit.

Three separate theories of liability are asserted to support the injunctive and compensatory relief which the plaintiff seeks. He claims first under 42 U.S.C. § 1983 that Norwich University acted under color of state law to deprive him of procedural due process rights secured by the Fourteenth Amendment. Norwich has moved to dismiss this claim under Rule 12(b)(6) on the grounds that Norwich is a private institution, which does not act under color of state law, and that even if Norwich acted under state law in dismissing Bateman, it did not deprive him of due process. Considering

the slight degree of state involvement in the affairs of
Norwich University which is revealed by the Vermont statutes,^{1/}
the comparative inoffensiveness of the conduct complained of
by Bateman,^{2/} and the important value of preserving a private
sector of higher education free from strict constitutional
scrutiny,^{3/} the Court is inclined to agree with the defendants
that Norwich University does not act "under color of state
law" and is therefore not required to incorporate Fourteenth
Amendment procedural protections in its dismissal procedures.
See, Washba v. New York University, 492 F.2d 96, 102 (2d Cir.),
cert. denied, 419 U.S. 874 (1974). However, because the
"state action" issue has not yet been fully developed in
discovery and other pretrial proceedings, the Court will
reserve ruling on this issue, as it affects defendant's motion
to dismiss the section 1983 claim, until further evidence is
presented, or the claim is withdrawn.

Plaintiff's second claim is based upon 42 U.S.C.
§ 1985(3), which grants a cause of action to redress injury
resulting from conspiracies to deprive "any person or class of
persons of the equal protection of the laws, or of equal
privileges and immunities under the laws." Defendants have
moved to dismiss this claim on the grounds that section 1985
(3) requires class-based discrimination and that no such
discrimination is alleged, or even suggested, in the complaint.
The Court agrees with the defendants that section 1985(3)
while reaching private conspiracies, requires " . . . some
racial, or . . . otherwise class-based, invidiously
discriminatory animus behind the conspirators' action."

Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). Since the complaint makes no allegations of the type of discrimination required by Griffin, plaintiff's claim under 42 U.S.C. § 1985 (3) must be dismissed.

Plaintiff's third theory of recovery is based upon a so-called "contract of education" which is said to have resulted by implication from his enrollment in Norwich University. Plaintiff argues that by paying his tuition and agreeing to abide by University regulations, he gained an implied contractual right to continued attendance at the University, and at the same time, the University undertook an implied duty to conduct its academic and disciplinary affairs, including its dismissal procedures, in the manner provided by its regulations. Following this argument, plaintiff claims that Norwich did not effect his dismissal in accordance with University regulations and thereby breached contractual duties owed to him, giving rise to a cause of action for damages.

In connection with these claims, the defendants submitted the following affidavits and exhibits to the court: (1) affidavit of President Loring E. Hart; (2) affidavit of John B. Wadsworth, the Commandant of Cadets; (3) affidavit of Colin Coffua, a senior cadet at Norwich, a member of the Corps Honor Committee, and a witness in the proceedings against the plaintiff; (4) affidavit of Robert E. Dufresne, the Chairman of the Corps Honor Committee; (5) a copy of the 1974-1975 Regulations of the Norwich University Corps of Cadets with an attached certificate, executed by the plaintiff on September 9, 1974, stating that the plaintiff had read and

understood the Regulations; (6) a certified copy of the agreement between the plaintiff and President Hart, dated April 24, 1975 and signed by the plaintiff; (7) a copy of the 1974-75 Cadet Handbook; (8) a copy of a notice of hearing to the plaintiff, dated April 10, 1975; and (9) a transcript of the hearing held on April 15, 1975. Based upon these affidavits and exhibits, all parties have moved for summary judgment pursuant to Rule 56. Since there is no genuine issue as to any material fact respecting the "contract" claim, the Court proceeds to rule upon this part of the motion.

Whether or not a cause of action exists for breach of a contract of education or enrollment, as alleged by the plaintiff, depends in this District upon the law of Vermont. However, the case law of this state does not provide a definite answer. The Vermont courts, of course, recognize that contracts may arise by implication and have stated in that regard that:

A ceremonial formulation by the parties of the contract terms, either oral or written, is not a prerequisite to the existence of an agreement. The contract and its terms may be implied from the facts surrounding the transaction. Cushman v. Outwater, 121 Vt. 426, 429 (1960).

But the Vermont Supreme Court has never determined specifically whether an implied contract arises upon the enrollment of a student in a University, or whether the terms of such contract are embodied in the University rules and regulations, or other official publications.

Nevertheless, other jurisdictions have recognized that enrollment does establish certain rights and obligations which bind both the student and the university administrators.

See, Carr v. St. John's University, 17 App. Div.2d 632, 231 N.Y.S.2d 410, aff'd 12 N.Y.2d 802, 235 N.Y.S.2d 834 (1962); Auser v. Cornell University, 71 Misc.2d 1084, 337 N.Y.S.2d 878 (Sup. Ct. 1972); Andersen v. Board of Regents of University of California, 22 Cal. App.3d 763, 99 Cal. Rptr. 531 (1st Dist., Div. 4, 1972); Zumbrun v. University of Southern California, 25 Cal. App.3d 1, 101 Cal. Rptr. 499, 51 A.L.R.3d 991 (2d Dist. Div. 5, 1972); Robinson v. University of Miami, 100 So.2d 442 (Dist. Ct. App. Fla. 3d Dist. 1958).

Although one commentator has pointed out that contract principles impose a somewhat "artificial mold" upon the student-university relationship, "Developments in the Law-- Academic Freedom," 81 Harv. L. Rev. 1045, 1147 (1968), the commentator nevertheless concedes that the law of contracts provides a justifiable rationale for judicial intervention in private school affairs. Ibid.

This Court takes the view that the law of contracts is helpful and appropriate, at least to a limited extent, in determining the rights and duties existing between a student and his college. While academic affairs should perhaps not be subjected to all the intricate legal rules which govern commercial agreements and transactions, since it is "unlikely that either administrators or students view their day-to-day relations as governed by a formal contract," Ibid., it is fair to conclude that basic and mutual understandings do arise upon a student's enrollment in an institution of higher education. In accordance with these understandings, a student, upon payment of tuition and fees, may rightfully expect that his education at the University

will be consistent with the information and regulations contained in official University publications. If the University's services to or treatment of a student vary arbitrarily, substantially, and materially from the terms and conditions of official publications, the student should be entitled to a cause of action for damages to redress any injuries flowing proximately from the breach.^{4/}

Because Norwich is a military college, enrollment establishes a more formal relationship between the students, referred to as "cadets", and the University than would be the case at most non-military colleges. The explicit terms of this relationship for the 1974-75 school year were set forth primarily in two official publications. The first of those publications is "The Regulations of Norwich University Corps of Cadets, 1974-75" [hereinafter "Regulations"], which is a detailed 122-page code of rules governing almost every aspect of student life; from the manner in which clothes must be kept on hangers in cadet quarters, Regulations § 14(3)(a), to the type of buttons that can be worn on cadet shirts, Regulations, § 11(5)(g), and the manner in which women guests must enter and exit cadet barracks during parietal hours. Regulations § 21(4)(c)(d). Of greater concern to us in this case, the Regulations also contain detailed disciplinary provisions, which incorporate specific "due process" protections for the benefit of cadets accused of disciplinary or honor code violations. See, e.g., Regulations § 25(2)(f), (g), (h); App. II.

Knowledge and understanding of the Regulations is considered "integral to the completion of the enrollment process at Norwich", Regulations, Foreward, as cadets are expected to adhere to the Regulations in all respects. In accordance with these expectations, each cadet was supplied a copy of the Regulations at the beginning of the 1974-75 school year and was required, as a prerequisite to matriculation, to sign a certificate stating that he had read and understood them. Plaintiff signed such a certificate on September 9, 1974.

In addition to the Regulations, Norwich also distributes a manual called the "Cadet Handbook" [hereinafter "Handbook"], which generally describes customs, activities, organizations, and school procedures, and also contains the Norwich University Honor Code, with which we are particularly concerned in this case. As indicated in the Handbook, pp. 41-48, the Honor Code is considered a vital aspect of academic life at Norwich. Violations of its basic principles can lead to prompt dismissal, Handbook, p. 43, but those accused are guaranteed extensive procedural protections, including the privilege against self-incrimination, Ibid. p. 46, the requirement of proof beyond a reasonable doubt, and the right to confront witnesses. Ibid. p. 47.

The Court agrees with the plaintiff that the Regulations and the Handbook embody the basic terms and conditions of the agreement which existed between himself and the University, while he was a student. To be sure, other contractual terms are unwritten or are contained in other

publications, but in this case we are concerned with only those specific, procedural provisions in the Handbook and Regulations, referred to above, which the University is claimed to have breached in effecting plaintiff's dismissal.

With reference to the specific allegations of breach, plaintiff makes five claims. Plaintiff urges first that under the Regulations the Honor Committee which heard his case did not have jurisdiction, and that he should have been tried by a Commandant's Board. Bateman then contends that even if the Honor Corps was the proper tribunal, it deprived him of fair procedures guaranteed by the Handbook and Regulations, by failing to advise him of his privilege against self-incrimination, by denying him a full opportunity to cross-examine a key witness, and by permitting one of the Honor Committee members to serve as a witness and then to participate in deliberations. Bateman argues finally that even if the Honor Committee acted properly, his agreement with President Hart nullified his dismissal, requiring a second hearing on the charge of "breaking restriction" or "entering room in barracks without authority." These points will be discussed seriatim.

1. Jurisdiction of the Senior Honor Committee.

The jurisdictional problem arises because Norwich set up two independent tribunals, a Commandant's Board and a Corps Honor Committee, with overlapping jurisdiction. On the one hand, Section 25 of the Regulations, entitled "Punishment," states at sub-section 2(b) that a Commandant's Board will hear cases involving offenses for which suspension or dismissal is a possible penalty. Misappropriation of

property is a Class I offense which may warrant suspension or dismissal under the Norwich system. App. I, p. 87. On the other hand, Section 28, entitled "Suspension and Dismissal," provides at sub-section 2(a) that cadets or other students found guilty of stealing will be dismissed as provided in the Honor Code, referring to the Cadet Handbook and Appendix II of the Regulations. The Handbook provides for hearings before the Corps Honor Committee in cases of alleged honor violations. Bateman was accused of stealing which is an Honor Code offense. He was tried before the Honor Committee, but it would seem that he could have been tried before a Commandant's Board, since misappropriation of property and stealing are virtually synonymous. The issue then is whether trying Bateman before the Honor Committee was a breach of contract.

It is the Court's conclusion that a hearing before the Honor Committee rather than before a Commandant's Board is not a breach of contract. To begin with, the University's interpretation of its own rules should be followed where that interpretation is reasonable. Norwich chose the Honor Committee route. Norwich should not be required to draft airtight hearing systems at its peril. In the gray areas it is unreasonable to assume that the administration violated its guidelines, and there is every reason to believe that it would follow them in good faith. Furthermore, Norwich's construction makes sense. Stealing is a deceitful offense suitable for an honor board. Also the Commandant's Board does not become a dead letter if stealing charges are referred to the Honor Committee. The Commandant's Board retains

jurisdiction over a number of other class I offenses which are not necessarily honor violations, for example, "driving to endanger (persons or property)." Regulations, App. I at 86.

Even if jurisdiction lies with the Commandant's Board rather than the Honor Committee, Bateman cannot insist on his rights at this point. Failure to raise a timely objection to Honor Committee proceedings constitutes a waiver of objection. It is clear that technical terms of a contract can be waived by a party's behavior inconsistent with his rights. Douglas & Varnum v. Village of Morrisville, 89 Vt. 393, 427 (1915). Plaintiff cannot submit to a hearing and then cry "foul" when the decision is not to his liking. Nor can he expect to harvest the errors he has sown, since this is a contract dispute, not a criminal appeal.

2. Privilege Against Self-Incrimination

Bateman argues that the chairman of the Honor Committee should have informed him of his privilege to remain silent in advance of questioning him at the hearing. This argument invokes a paragraph of the Handbook entitled "Self Incrimination," which states the following rule:

No person living under the Honor Code at Norwich University may compel any other person living under the Code to incriminate himself or to answer any question which may tend to incriminate him. No person subject to the Honor Code may request a statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected; that if he does make a statement it may be used against him; and that his silence will in no way be held against him. If an individual does wish to testify or make a statement at a hearing, he then subjects himself to cross-examination. Handbook, p. 46.

At a hearing the Committee failed to give the required warnings to Bateman before taking a statement from him and subjecting

him to cross-examination. This failure constituted a breach of a fundamental right which Norwich had created and which was clearly applicable in the circumstances of this matter.

However, the Court believes that any breach of duty in this regard was cured when Bateman took an appeal from the decision of the Honor Committee to the Commandant and failed to raise his due process objection at that time. At the conclusion of the Honor Committee hearing, plaintiff was advised of his right of appeal, including the right to "question the application of due process." These rights were consistent with appeal procedures outlined in the Regulations, App. II, p. 92. Since Bateman decided not to follow that prescribed method for raising his procedural objections on appeal, choosing instead to enter into a new agreement with President Hart on April 24, Bateman cannot be heard to raise his objections now in this Court. All due process or other procedural or substantive objections that might have been raised in accordance with Bateman's original "agreement" with Norwich University were lost and became merged into the new agreement with President Hart. Thus, if a "breach of contract" occurred as a result of the failure to advise Bateman of his rights at the hearing, the breach is immaterial, since it was not the reason for Bateman's ultimate dismissal. His dismissal was for breach of his agreement with the President, an agreement to which he had acquiesced and which took the place of any previous agreement that he had with the University.

3. Cross-Examination

Security Officer Winberg was one of two members of the campus security force who observed Bateman during the interval in which Bateman was allegedly siphoning gas from a fellow student's car. Winberg wrote a statement of what he had seen, and the statement was given to Bateman 48 hours in advance of the hearing, along with the other evidence against him. Winberg was not present at the hearing, but his statement was read into the record after the Chairman had asked Bateman if he objected to this procedure and Bateman replied that he did not object.

The regulations specifically extend the right to cross-examine, Regulations, App. II, p. 90, and Bateman was so informed. However, plaintiff's failure to take advantage of his procedural rights cannot be transformed into a breach by Norwich of its obligations. Even if the procedures were somehow defective, Bateman's proper remedy was an appeal to the President, as provided in the Regulations--a remedy which he failed to pursue, as previously discussed.

4. Cadet Coffua's Role in the Proceedings

Cadet Colin Coffua was contacted by Security Officers on the night of the gas-siphoning incident, and was told that Bateman was a suspect. Coffua, a member of the Honor Committee, was asked by the officers to get Bateman, and after he had done so, the group went to inspect Bateman's car. Officer Jennings asked Bateman to open the trunk of his car, and Bateman complied, revealing two hoses and two gas cans. At the hearing, Coffua described his part in the discovery of the gas cans and hoses and also took an active part in questioning witnesses, as did other members of the

Honor Committee. Coffua was the recorder for the Committee, but he did not vote in the final determination.

Although plaintiff argues that Coffua's participation was improper, he does not allege an infringement of specific rules or regulations. In fact, it does not appear that any provision of the Handbook or Regulations bars Committee members from serving as witnesses. Thus, even if Coffua's participation offends a basic sense of fairness and might be inappropriate in a judicial proceeding, it does not constitute a breach of Norwich's obligations. Moreover, as previously discussed, plaintiff failed to object to Coffua's participation either at the time of the hearing or upon appeal, and he cannot raise those objections now.

5. Necessity for a Hearing to Determine
Whether Bateman Violated his Agreement
with Hart.

After the Honor Committee found Bateman guilty and recommended his dismissal, a special order was published on April 23, 1975 dismissing him from the Corps of Cadets. Notwithstanding his dismissal, Bateman asked if he could finish the semester. He was granted permission to do so on April 24th on condition that he reside off campus and only return to Norwich in civilian clothes to attend classes, consult with professors, or to use the library. Plaintiff agreed to these conditions, yet on May 9, 1975, Commandant Wadsworth received a report that Bateman had been in barracks. Three days later Wadsworth confronted Bateman with the charge, and plaintiff admitted that he had broken his pledge. Accordingly, Wadsworth informed Bateman that he would

recommend his immediate dismissal. Plaintiff appealed to President Hart but to no avail. After discussing the matter with his advisors, Hart reaffirmed the dismissal on May 14, 1975.

Plaintiff argues that Hart's decision to let Bateman stay in school was in fact a rejection of the Honor Committee's recommendation that he be dismissed. Under this theory, Bateman's presence in barracks was a second offense necessitating a second hearing before any action could be taken against him.

This argument does not fit the facts. Bateman had been dismissed from the Corps on April 23rd. He was allowed back on campus to finish the semester, but only in a civilian status. It is clear that he was not considered a part of the Corps from the restrictions on his access to campus and his dress. Since Bateman was not a Corps member after April 23rd, the Regulations and Handbook do not govern events transpiring after that date. Bateman's agreement with President Hart controls. Thus, when plaintiff broke the agreement, Hart was free to order him to leave Norwich. Even if Bateman should still have been considered a member of the Corps, however, it is appropriate to consider the agreement between Hart and the plaintiff as having superseded any prior contract of enrollment. Thus, no hearing was called for regardless of Bateman's formal status.

Summary

Since the plaintiff has failed to prove substantial or material violations of the terms of his implicit, contractual relationship with Norwich, no breach has occurred.

His dismissal was based upon reasonable findings following reasonable procedures which substantially accorded with established rules and regulations. Any objections that might have been raised concerning the fairness of the procedures were forfeited when plaintiff failed to raise those objections in a timely appeal to University officials. For the reasons stated in this opinion, defendants' motion for summary judgment on plaintiff's claims of breach of contract is granted, and plaintiff's motion for summary judgment is denied; and as previously discussed, defendants' motion to dismiss the claim based upon 42 U.S.C. § 1985(3) is also granted. It is so ORDERED. It is further ORDERED that all discovery with reference to plaintiff's claim under 42 U.S.C. § 1983 be concluded within sixty days from the date of this order... together with such amendment to plaintiff's complaint as may be indicated. The matter will be set for hearing as soon thereafter as the Court's regular schedule permits.

Dated at Burlington in the District of Vermont, this
17th day of March, 1976.


District Judge

FOOTNOTES

1/ The Cadet Handbook states that the school received a state charter in 1834. Handbook at 3. Vermont currently recognizes Norwich as the military college of the State and requires that administrators and faculty have "local rank," presumably referring to rank in the Vermont Army National Guard. None of these officers, however, receives any remuneration from the State. 16 V.S.A. § 2471. Vermont does not appropriate any funds for Norwich as it does for the University of Vermont (UVM) and the Vermont State Colleges. See 1975 Laws of Vermont, No. 118 §§ 10(ff), (gg)(1). With respect to State and senatorial scholarships, Norwich is treated like any other educational institution. In order for students to use scholarships at Norwich, the University must maintain its accreditation with the New England Association of Colleges and Secondary Schools. 16 V.S.A. §§ 2822(h), 2531a(a)(Supp. 1975). Norwich's only other connection with Vermont is that its library, along with the libraries of UVM, the Vermont State Colleges, Middlebury, St. Michael's and Vermont Technical College, has been designated by statute as a collection point for the Vermont Acts and Resolves, Journals of the Vermont House and Senate, and the Vermont Reports. 29 V.S.A. §§ 1158(a), 1160, 1192. It seems that Vermont's involvement with Norwich is very limited.

2/ The conduct complained of here is certainly not as offensive as racial discrimination. Bateman was accorded a rather extensive due process hearing and bases his claims upon what appear to be insignificant procedural details. Even if Norwich's conduct was illegal, it would seem that any procedural defects were innocent mistakes rather than the kind of vicious slights found in racial equal protection cases for which state action requirements are relaxed. Jackson v. Statler Foundation, 496 F.2d 623, 628-29 (2d Cir. 1974), cert. denied, 420 U.S. 927 (1975).

3/ See, Greene v. Howard University, 271 F. Supp. 609, 615 (D.D.C. 1967).

4/ Since plaintiff has stated a claim for relief for breach of contract, the Court has jurisdiction under 28 U.S.C. § 1332 to decide this claim, as the plaintiff is a citizen of Massachusetts, the defendants are citizens of Vermont, and more than \$10,000 is in controversy.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

LAWRENCE BATEMAN

VS.

NORWICH UNIVERSITY, LORING E.
HART, Individually and as President
of Norwich University, JOHN B. WADSWORTH, JR.,
Individually and as Commandant of Cadet' of
Norwich University

Civil Action
File No. 75-125

NOTICE OF APPEAL

Notice is hereby given that Lawrence Bateman, plaintiff in the above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Final Judgment entered in this action on the 26th day of November, 1976 and from the Decision of the Court issued in its Opinion and Order of March 17, 1976.

Dated at City of Barre, County of Washington and State of Vermont
this 3rd day of December, 1976.

By Thomas F. Heilmann
THOMAS F. HEILMANN, ESQ.

✓
CERTIFICATE OF SERVICE

I, Thomas F. Heilmann, attorney for plaintiff, hereby certify .
that I have forwarded copy of Notice of Appeal to defendants' attorney,
Garfield Miller, Esquire of the law firm of Black & Plante, P. O. Box 368,
White River Junction, VT 05001, through the United States mail, postage pre-
paid on this 3rd day of December, 1976.

By 151 Thomas Heilmann
THOMAS F. HEILMANN, ESQ.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

LAWRENCE BATEMAN

vs.

NORWICH UNIVERSITY, LORING E.
HART, Individually and as President
of Norwich University, JOHN B. WADSWORTH, JR.,
Individually and as Commandant of Cadets of
Norwich University

Civil Action
File No. 75-125

AGREED STATEMENT AS TO THE RECORD
ON APPEAL

Pursuant to Rule 10(d) F.R.A.P., the parties hereby agree and stipulate that the issues presented by this appeal concern the propriety of the District Court granting of defendants' Motion for Summary Judgment for defendants on March 17, 1976.

The issues presented by this appeal arose from defendants' Motion for Summary Judgment and plaintiff's Motion for Summary Judgment. The facts upon which the judgment of the District Court was based and the facts upon which the Court of Appeals may review said judgment are the pleadings and admissions on file with the Court as well as the documents submitted to the Court by the parties in connection with the cross-motions for Summary Judgment.

No evidence was introduced to the Court other than the documents and writings submitted in connection with the Summary Judgment Motions and the parties agree that no transcript of the proceedings before the District Court is necessary to present the issues on this appeal.

Approved:

Approved:

Thomas F. Heilann
Dated: December 13, 1976
THOMAS F. HEILANN, ESQUIRE

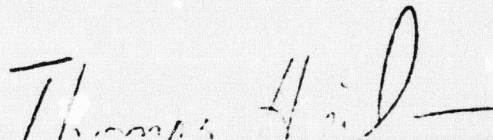
ALBERT W. COFFIN
U.S. DISTRICT JUDGE

Dated: _____
GARFIELD MILLER, ESQUIRE

CERTIFICATE OF SERVICE

I, Thomas F. Heilmann, attorney for plaintiff, hereby certify that I have forwarded copy of the Agreed Statement as to the Record on Appeal to defendant's attorney, Garfield Miller, Esquire, P. O. Box 368, White River Junction, VT 05001, through the United States mail, postage prepaid on this 13 day of December, 1976.

By



THOMAS F. HEILMANN, ESQUIRE
Richard E. Davis Associates, Inc.
Attorneys for Plaintiff



NORWICH UNIVERSITY

NORTHFIELD, VERMONT 05663
TEL 802-485-5011

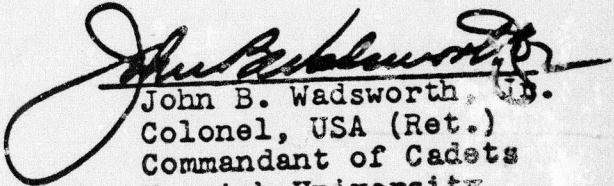
OFFICE OF THE COMMANDANT

29 May 1975

TO WHOM IT MAY CONCERN:

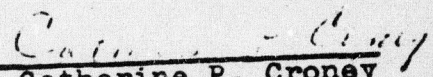
This is to certify that the attached booklet, The Regulations of the Norwich University Corps of Cadets, 1974-75, is a true copy of the Regulations provided to all cadets on enrollment at the beginning of school year 1974-75.

I further certify that the signature of Cadet Bateman on the Certificate of understanding, a part of the Regulations, is, to the best of my knowledge and belief, his true signature.


John B. Wadsworth, Jr.
Colonel, USA (Ret.)
Commandant of Cadets
Norwich University

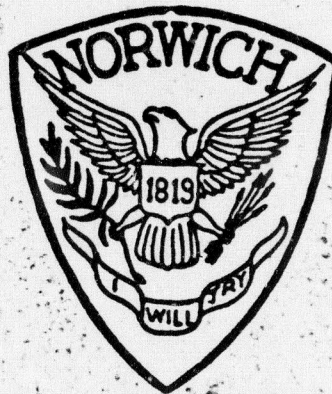
State of Vermont
Washington County

Colonel John B. Wadsworth, Jr., personally appeared before me at Northfield, Vt., on 29 May 1975, and attested the above was true.


Catherine P. Croney
Notary

Commission Expires Feb. '76

THE REGULATIONS



OF THE NORWICH UNIVERSITY
CORPS OF CADETS

1974-1975

NORWICH UNIVERSITY
Office of the President

August 1974

1. Knowledge and understanding of these Regulations is integral to the completion of the enrollment process at Norwich University for the academic year 1974-75. All cadets, Norwich women and special matriculants will read these Regulations and acknowledge their understanding of same in order to properly complete their enrollment for the school year. The Board of Trustees has approved these Regulations which have been promulgated for the information, guidance and compliance of all members of the Norwich University Corps of Cadets. Norwich women and special matriculants will adhere to those portions of these Regulations which are appropriate.
2. Members of the Corps of Cadets are required to comply with these Regulations as soon as they have joined the Corps on the first day of their initial enrollment. While a reasonable amount of time is allowed to thoroughly digest these Regulations after initial enrollment and after each subsequent enrollment, this grace period in no way excuses a cadet from compliance with whatever Regulations are in effect at any time he is on the University campus, to include summer sessions, whether enrollment for the current year has been completed or not. It is the responsibility of each cadet to check the applicable portion(s) of the current Regulations prior to engaging in any activity governed thereby to ensure he complies therewith.
3. Organizational policy (civilian or military) is constantly subject to change by the promulgating authority. Changes are brought about by those individuals subject to the policy, changes in our sociological environment and by changing circumstances which invalidate existing policy. It is the responsibility of each cadet to ensure his copy of these Regulations is kept current. The Change Tabulation Sheet will be inspected periodically to make sure each cadet has an up-to-date copy of the Regulations. This (Requirement) also applies to Norwich University Women and to Special Matriculants.
4. In any interpretation of these Regulations, the spirit intended will be sought. Traditions, precedents and previous customs will not be accepted in defense of any violation of these Regulations. Quibbling over technicalities is indicative of a failure to grasp the true spirit of these Regulations.

5. For the information of all concerned, this University reserves the right to exclude from enrollment those individuals who by past performance have demonstrated an inability to adapt to the cadet life-style found at Norwich or who do not have the personal qualities required for membership in the Norwich University Corps of Cadets.
6. The University reserves the same right to exclude Norwich women and special matriculants from enrollment who by past performance have demonstrated an inability to adapt to the Regulations of this University and those appropriate portions of the Corps Regulations.
7. These Regulations supersede previous publications thereof.

Loring E. Hart

LORING E. HART
Brigadier General
President

14. MESS HALL CONDUCT. Any cadet who participates in throwing of food or any other article in the Cadet Mess or other University facility or who allows any guest to do the same may be suspended from the University or less severely punished.

SECTION 25 - PUNISHMENT

1. ORDINARY PUNISHMENT.

- a. GENERAL - Ordinary Punishment includes demerits received on an Abstract of Delinquencies and punishment tours accrued.
- b. DEMERITS - Demerits will be awarded in accordance with the Table of Delinquencies (Appendix I) and appropriate Hearing Board judgments.
- c. PUNISHMENT TOURS - Punishment Tours will accrue at the rate of one tour for each demerit in excess of twelve (12) per demerit month. During examination periods this is changed to allow only five (5) demerits before tours begin to accrue.
 - (1) Punishment tours will be reported weekly as prescribed by the Commandant and posted in each company.
 - (2) Punishment Tour Formation will be held as scheduled by the Commandant. The Regimental Duty Officer will be in charge of Punishment Tour Formations.
 - (3) Cadet officers or non-commissioned officers who receive punishment tours for two consecutive demerit periods will be ordered to appear before The Corps Review Board to show cause as to why they should not lose their rank. The proceedings and the recommendations of the board will be forwarded through the Regimental Commander to the Commandant.
 - (4) Cadet officers and non-commissioned officers will normally serve punishment tours assisting the Regimental Duty Officer with the supervision of the Punishment Tour Formation.
 - (5) Cadet privates, recruits and designated non-commissioned officers will march tours as directed by the Commandant.

- (6) Cadets who have punishment tours may, with prior permission of the Commandant, serve tours by performing work in the interest of the University. Fifty minutes of effort will be credited as one punishment tour. No more than two tours may be worked off per week in any one Academic Department. The last three (3) tours must be marched during a regular Punishment Tour Formation on Saturday.
- (7) Punishment tours may be marched between 0800 and 1600 with the approval of the Assistant to the Commandant except for the last three (3) tours which must be marched at the regular Saturday Punishment Tour Formation.
- (8) Cadets who receive direct punishment tours as part of special punishment will not be permitted to work off any of these punishment tours.
- (9) Cadets who fail to complete their punishment tours prior to the end of any semester will be carried incomplete. No grades or transcripts will be issued. Should a cadet who fails to complete his tours return to the University the following semester or school year, he will be placed in Close Military Confinement until he has completed his tours at which time he may, upon request, receive his grades for the previous semester.
- (10) As the proper completion of the University's disciplinary requirements is as much a part of graduating from Norwich as is the proper completion of academic degree requirements and the payment of all financial obligations, no cadet will participate in graduation exercises or receive his diploma until he has completed any outstanding punishment tours and his record has been cleared by the Office of the Commandant.

2. SPECIAL PUNISHMENT.

- a. GENERAL - Special punishment is the most stringent form of corrective action utilized within the Corps of Cadets. It consists of direct demerits, direct punishment tours, campus confinement, Close Military Confinement, reduction in rank, suspension, dismissal or combinations of the foregoing as approved by the Commandant or the President, in the case of suspension or dismissal. Special punishment is awarded for Class I Offenses. Matters in extenuation and mitigation are always considered in each case. Additionally, a cadet's past record is considered. If it has been a good one (merit system) the award recommended will probably be less than the normal, or a portion of the award will be suspended for a period of time. A suspension of a portion of an award may be vacated at any time the respondent commits another infraction of the Regulations. It need not be of the same nature as the original infraction.
- b. CLASS I OFFENSES - Cadets found guilty of committing Class I Offenses will be awarded punishment by The Corps Review Board or a Commandant's Board depending on the severity of the offense. Offenses which carry a maximum award of suspension or dismissal will be heard only by a Commandant's Board. Class I Offenses are listed in Appendix I.
- c. PROCEDURE - A cadet who is ordered to appear before The Corps Review Board may introduce evidence or witnesses on his behalf. He may also be assisted, but not represented, by a cadet advisor of his choice. A cadet who is ordered to appear before the Commandant's Board may introduce evidence or witnesses on his behalf. He may also be assisted, but not represented, by a cadet or a member of the staff or faculty. This member of the staff or faculty may not possess any legal qualifications. Should the cadet be unable to procure an advisor, the Regimental S-1 will assist him in doing so. Individuals assisting a respondent may not present the case, but are there to assist the respondent in presenting his own case.
- d. COMMANDANT'S HEARING BOARD - The Commandant's Hearing Board will hear all Class I Offenses which require members of the faculty, staff or civil authorities as witnesses or which could result in suspension or dismissal from the University. It will also hear such other cases as deemed appropriate by the Commandant. This Board may consist only of the Commandant in summary session (provided the respondent

agrees and suspension or dismissal are not involved) or it may consist of a group of individuals appointed by the Commandant from the staff and the Corps of Cadets. At no time will a cadet appear before this hearing board on which there are members subordinate in cadet rank to him. Regardless of the composition of the Board, due process will be followed and two observers from the class of the respondent will always be present, unless the respondent specifically waives this right.

- e. CORPS REVIEW BOARD - The Corps Review Board is a permanent Cadet Board which will hear all Class I Offenses within the Corps except those referred to the Commandant's Hearing Board. It is appointed on Special Orders and is composed of a President, Vice President, three members, two alternate members, a clerk and two assistant clerks. The Board is also empowered to hear and pass judgment on purely administrative cases. Its recommendations are subject to approval by the Regimental Commander.
- f. DUE PROCESS - Due process is the term applied to the procedures which must be followed in bringing a violator of administrative regulations or civil law to justice. While all infractions and the ensuing corrective measures of the Regulations of the University are purely administrative in nature (rather than judicial), due process will nevertheless be followed in all cases at Norwich. The steps in due process are as follows:
 - (1) Informing the respondent of the charges against him as soon as possible. He must be told at this time of his right to remain silent, that anything he says may be held against him, but if he says nothing guilt will not be presumed.
 - (2) Conducting an impartial, expeditious investigation to verify that the evidence supports the charges.
 - (3) If the investigation indicates that an infraction has occurred, informing the respondent and providing him with all the evidence against him which the investigation has disclosed; informing him that he may choose any cadet he desires to assist him in the presentation before the Corps Review Board or in the case of a Commandant's Board, he may request the assistance of a cadet or a member of the staff or faculty who does not possess legal qualifications.

- (4) Providing the respondent with a reasonable amount of time to prepare his presentation (normally 48 hours from the time he is officially informed that he will appear before a hearing board).
- (5) During the hearing, providing the respondent with the right to be present at all open sessions and to cross-examine all witnesses who appear against him.
- (6) Providing the respondent with the right to present any material witnesses on his behalf, as to the facts in the case. After the findings of the Board have been announced, the respondent may introduce any mitigation or extenuation he feels is relevant to the case, to include character witnesses.
- (7) After the Board has informed the respondent of the recommended corrective measures (should a finding of guilty be adjudged), informing the respondent of his right of appeal should he not concur with the subsequent action by the appointing authority (normally the Commandant of Cadets).

g. APPROVAL AND APPEAL -

- (1) Approval of all Board action is vested in the Commandant of Cadets except for those judgments awarding suspension or dismissal. Only the President can approve a recommendation of suspension or dismissal.
- (2) Appellate procedures are available to all cadets. Appeals on findings and recommendations of The Corps Review Board will be submitted to the Commandant of Cadets in writing. Appeals on action by the Commandant as a result of a Commandant's Hearing Board will be submitted to the President of the University in writing.
- (3) A respondent who desires to appeal an action must have proof that one of the following existed in his case:
 - (a) Due process was not followed.
 - (b) The evidence presented did not support the finding, or
 - (c) The award was not appropriate to the violation.

Unless the respondent has such proof, the appeal will be denied.

SECTION 28 - SUSPENSION AND DISMISSAL

1. GENERAL. Cadets may be suspended or dismissed from Norwich University as provided by the Regulations. The University reserves the right, at any time, to deny enrollment to a cadet or other student whose conduct, aptitude or academic standing is unsatisfactory. However, no cadet will be suspended or dismissed without the approval of the President.
2. DISMISSAL. Cadets may be dismissed from the University for the following reasons. Cadets who are dismissed may not re-enroll at the University at any time.
 - a. Cadets or other students found guilty of stealing will be dismissed as provided in the Honor Code (See Cadet Handbook and Appendix II).
 - b. Cadets found guilty of vicious or immoral conduct are subject to dismissal.
 - c. Cadets who are found lacking in aptitude may be dismissed.
 - d. Cadets who are placed on Disciplinary Probation for the fourth (4th) time are subject to dismissal.
3. SUSPENSION.
 - a. Cadets found guilty of the following offenses are subject to immediate suspension from the University. They will not normally complete the semester in which enrolled. They will be suspended from the University for a specific period of time, but normally not less than one semester:
 - (1) An honor violation as provided for in the Honor Code (See Cadet Handbook and Appendix II).
 - (2) Placement on Disciplinary Probation for the third (3rd) time.
 - (3) Violation of Close Military Confinement.
 - (4) Intimidation, or verbal or physical assault, upon a member of the Chain of Command or upon any other cadet in performance of his official duties.
 - (5) Possession, sale or use of any regulated drug without medical authorization from the University Surgeon.

SECTION 35 - SPECIAL MATRICULANTS

1. CRITERIA. Students who meet the following criteria may upon application, be granted special matriculant status.
 - a. Male applicants must have served honorably for at least two years in the military service, or be disqualified for participation in NUCC activities because of physical handicap, or the fact that their ages is considerably greater than the members of the class in which he intends to enroll.
 - b. Female applicants may be granted special matriculant status because of the fact that their ages is considerably greater than the members of the class in which she intends to enroll.
 - c. Applicant must not have been dismissed from Norwich or suspended from Norwich for the second time for cause (excluding academic suspensions.)
 - d. Applicant must demonstrate maturity, and that he or she understands and accepts the purpose and philosophy of Norwich University.
2. GOVERNING PRINCIPLES. Students who are granted special matriculant status will be governed by the following:
 - a. A special male matriculant will not be a member of the Corps of Cadets, will not wear the cadet uniform, and will not be subject to the detailed requirements of the Corps. However, he will be held responsible for compliance with all applicable sections of the Regulations and will be expected to maintain standards of dress and decorum consistent with those expected of cadets.
 - b. A special matriculant will be expected to pay the regular schedule fees, including the student activity fee, and accordingly be able to attend extra-curricular functions and visit the appropriate class clubs, subject to the same general standards as apply to cadets. The normal tuition charge will apply to special matriculants who are registered for twelve (12) or more semester credit hours; if fewer than twelve (12), the tuition charge will be by credit hour.
 - c. A special matriculant will be subject to the same degree requirements as any other student in the same class or curricular program.
3. The total number of special matriculants will be limited to a percentage of the student body established by the Trustees of the University.

Eating out-of-doors in uniform	EOU	3
Entering room in barracks without authority	ER	Class I
Equipment in need of repair	ENR	5
Error in official paper	EOP	2
Error in official paper-Guard		5
Failure to report properly	FRP	5
Failure to know duties	FKD	5
Failure to know duties-Guard	FKD-G	10
Failure to render courtesies to superiors	FRC	5
Failure to render proper military courtesy	FRMC	10
Failure to render proper report	FRR	5
Gambling or allowing gambling	G	Class I
Hair not properly cut	HNPC	5
Hands in pockets	HP	3
Hat improperly adjusted	HIA	3
Hat on indoors	HOI	2
Hazing	H	Class I
Improper attitude	IA	5
Improper bearing	IB	5
Improper conduct	IC	5
Improper judgment	IJ	5
Improper parking-1st offense	IP	\$2.00
Improper parking-2d offense	IP-2	\$3.00
Improper parking-3d offense	IP-3	\$5.00
Improper parking-subsequent offenses	IP-4	\$5.00
Improper table manners	ITM	1 DT
Improper uniform	IU	5
Inattention to orders	ITO	3
Incorrect or no door card	IDC	5
Incorrect or no destination card	IDC	5
Incorrect official report	IOR	5
Incorrect or not schedule card on door	ISC	5
Indifferent attitude	IDA	10
Insubordination	IS	Class I
Intimidation	I	Class I
Items not properly arranged	INPA	2
Late to formation	LF	3
Late to formation-Guard	LF-G	5
Late for duty	LD	3
Late for duty-Guard	LD-G	5
Late official paper	LOP	2
Late returning to the University	LRU	10
Laughing in ranks	LR	2
Leaving class without permission	LC-P	10
Leaving duty without permission	LD-P	10
Leaving duty without permission-Guard	LD-P/G	Class I
Leaving lights on	LLO	2
Marching tours improperly	MTI	5
Messy wardrobe drawers	MWD	3
Misappropriation of property	MP	Class I
Misconduct (See page 58)	MC	Class I
Misuse of telephone service	MTS	Class I
Neglect of duty	NOD	5
Neglect of duty-Guard	NOD-G	10
No name tag	NNT	3

APPENDIX II

NORWICH HONOR SYSTEM

1. The principles of the Honor Code and the procedures for its implementation are contained in the Norwich University Cadet Handbook and the Vermont College Division Handbook. These handbooks are issued to all incoming students each school year to include special matriculants. It is the duty of each student who enrolls at Norwich University to become familiar with the Code and abide by its precepts. Failure to comply with the provisions of the Code can result in a student's being suspended or dismissed from the Norwich University community or to receive a less severe penalty as recommended by the Honor Committees and approved by the President.
2. Specific case procedures are explained below for the consumption and understanding of all students:
 - a. An alleged violation is reported to a member of the Senior Honor Committee.
 - b. Three members of the Junior Honor Committee are designated by the Chairman of the Senior Honor Committee to investigate the alleged offense. They will submit a written report to the Chairman as soon as possible but not later than forty-eight (48) hours after being instructed.
 - c. Upon receiving the Report of Investigation, the Chairman of the Senior Honor Committee will determine whether to call a hearing or not. If a hearing is to be held--
 - (1) The Chairman of the Senior Honor Committee will ensure that the Accused is advised in writing as to:
 - (a) The charges against him and the sanctions which may be applied if the charges are proven.
 - (b) The date, time and place of the hearing (at least forty-eight hours after receiving written notice of the charges). The accused may request more time if valid reason exists.
 - (c) The names of the witnesses who will appear against him and the substance of their testimony.

(d) That he has the right to be present during all open sessions, to present a defense and witnesses in his own behalf, and the right to cross-examine all adverse witnesses. He may present evidence in his own behalf, or testify in person or submit a written statement, or submit a brief. Defense witnesses may be cross-examined.

(2) The accused may be assisted in his defense at the hearing by a cadet advisor of his choice to include a member of any of the Honor Committees. As legal counsel is not available to the Honor Committee, the accused is not entitled to legal counsel.

3. The procedure to be employed in hearing alleged honor violations is similar to that for all hearing boards and is outlined below:

Chairman: This Hearing of the Honor Committee is convened in order to establish the facts concerning an alleged Honor Violation by _____. All members of the Committee here present are reminded that this is a formal hearing and will be conducted accordingly. As Chairman, I will ask the majority of questions. However, other members of the Committee may ask questions to clarify answers or to bring out pertinent information. I would also remind you that it is our duty to determine whether or not a violation has occurred, and to recommend appropriate disposition to the President of the University if there has been a violation.

Are there any Questions?

If not, the Recorder will call _____, who is accused of violating the Honor Code.

(accused is seated)

Chairman: _____, this hearing of the Honor Committee has been convened to determine the true facts concerning your alleged violation of the Honor Code, specifically _____. The point of Honor involved is _____. Do you understand the nature of the alleged violation? (Repeat details if necessary)

Have you received in writing:

- (1) Notice of the charges against you and the sanctions which may be applied if the charges are proven?
- (2) Notice of the date, time and place of the hearing (at least forty-eight hours after receiving written notice of the charges)?
- (3) The names of witnesses who will appear against you and the substance of their testimony?

- (14) That you have the right to be present during all open sessions, to present a defense and witnesses in your own behalf, and the right to cross-examine all adverse witnesses. You may present evidence in your own behalf, or testify in person or submit a written statement, or submit a brief. Defense witnesses may be cross-examined.

Do you Understand that-

- (1) You may be assisted in your defense by a student advisor of your choice to include a member of any Honor Committee, but legal counsel is not permitted at Honor Committee Hearings as there is no legal representation on the Honor Committee?
- (2) In the course of this hearing if you or any other person is asked a question concerning himself in a matter of which he has knowledge, he is expected to answer the question in a forthright and honest manner?

Chairman: I now ask you how you plead to the alleged violation-- GUILTY OR NOT GUILTY?

(EITHER)

ACCUSED: GUILTY

Chairman: Do you understand that your plea of Guilty is an admission that you violated the Honor Code? Do you wish to make any further statement? You may return to your room to remain there until further notice. Any further discussion by the Committee?

This meeting of the Honor Committee is Closed.

(OR)

ACCUSED: NOT GUILTY

Chairman: (The Chairman will outline the circumstances of the violation, point out the point(s) of honor violated in this particular incident, the exact time when it became too late for the Accused to turn himself in for the alleged violation, and any other specific items relative to the case in hand).

Each witness will state his name and whether associated with Norwich University and in what capacity.

The Accused will submit questions in writing to the Chairman who will direct the questions to the witness. Written testimony will be read in the Hearing by the Recorder.

After all testimony has been heard, the Chairman addresses the Accused -

Chairman: _____ Do you desire to testify further in your behalf or do you have any additional witnesses or evidence to present at this hearing?
Do you wish to say anything to the Committee at this time?

Any further questions or further examination of the evidence desired by the Committee?

If not, the hearing is closed during discussion and consideration of the case.

(After discussion and vote the Recorder will recall the Accused.)

Chairman: _____ You have been found NOT GUILTY/GUILTY of an Honor Violation. (A 3/4 vote is required for a finding of GUILTY).

(IF NOT GUILTY)

Chairman: All records of this hearing will be destroyed and the tape cleared.

(IF GUILTY)

Chairman: The Recorder and I will use the recorded tape to prepare a written report of the case to include summaries of testimony. The tape is retained as the property of the Honor Committee. The written report is forwarded to the President through the Commandant. Within 24 hours the Commandant will inform you of the sanction to be imposed.

You are advised that an appeal may be made in writing to the President of Norwich University within 24 hours after you have been advised of the sanction to be imposed. In order for the appeal to be considered, it must present substantial new evidence or question whether the evidence presented was sufficient, question the Hearing Committee's conduct, question the application of due process or indicate that the sanction imposed was not in keeping with Norwich University policy in such matters.

Should suspension or dismissal be included in the imposed sanction, you are expected to officially clear the University in the shortest possible time (2-4 hours of normal working hours) after being officially advised of the sanction to be imposed.

Do you have any further questions or comments?

This Hearing is concluded.

(A verbal report is made to the Commandant. The completion of written report will be given high priority. It should be brief and concise but provide substantial support of the finding.)

4. Stealing is a felony and is considered the most serious violation of the Honor Code. A thief can not be tolerated on this campus. As a result, the punishment for anyone found GUILTY of STEALING is immediate DISMISSAL from the University. Such an individual will never again be permitted to enroll at Norwich University in any capacity. The punishment for other violations of the Honor Code will normally be suspension from the University for one academic year. However, if an individual violates the Code and turns himself in for the violation, the Honor Committee will recommend a punishment other than suspension. If an individual violates the Code and even though he does not turn himself in, admits his guilt at the Honor Committee Hearing, the Honor Committee may also recommend a punishment other than suspension.
5. All persons who enroll at Norwich University voluntarily subject themselves to the provisions of the Honor System. Those persons who have questions regarding the Code or its administration should contact a member of the Honor Committee or the Commandant for clarification before they find themselves in violation of the Code. Ignorance of the Code and its administration is no defense after a violation has occurred.



NORWICH UNIVERSITY

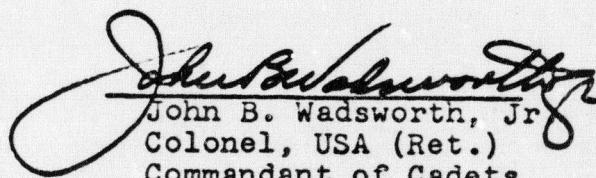
NORTHFIELD, VERMONT 05663
TEL 802-485-5011

OFFICE OF THE COMMANDANT

29 May 1975

TO WHOM IT MAY CONCERN:

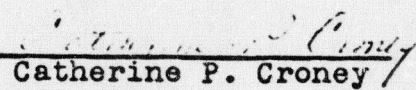
This is to certify that the attached booklet, Norwich University 1974-75 Cadet Handbook, is a true copy of the Cadet Handbook provided to all cadets at the beginning of school year 1974-75.



John B. Wadsworth, Jr.
Colonel, USA (Ret.)
Commandant of Cadets
Norwich University

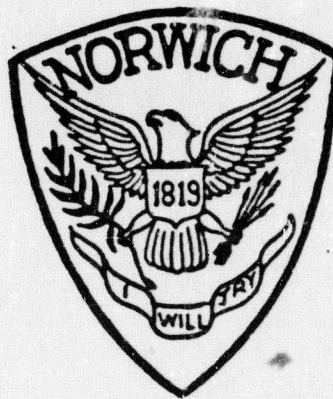
State of Vermont
Washington County

Colonel John B. Wadsworth, Jr., personally appeared before me at Northfield, Vt., on 29 May 1975, and attested the above was true.


Catherine P. Croney
Notary

Commission Expires Feb. '79

Norwich University



1974 - 1975

CADET HANDBOOK

Class, and it is their responsibility to maintain the spirit and traditions of the Honor Code within the Corps, to indoctrinate new cadets in the principles of honor, to insure understanding and appreciation of the principles and interpretation of the Honor Code, and to administer the Code within the Corps. The Junior and Sophomore Honor Committees aid and assist the Corps Honor Committee in the execution of its mission.

The Commandant of Cadets is responsible for supervising the administration of the Honor Code. In this capacity he aids the Corps Honor Committee and Class Honor Committees in the discharge of their duties and responsibilities.

The President of the University must approve the reports of all Honor cases before final action is taken. He also reviews all proposed changes of policy which are related to the Honor Code, and has final jurisdiction in all matters pertaining to the code.

New Cadet Indoctrination

All freshmen and new cadets undergo a period of honor indoctrination during their first semester in residence at Norwich University. The purpose of this indoctrination is to instill in them the principles and ideals upon which the Honor Code is founded.

The Honor Indoctrination consists of weekly lectures by the Corps Honor Committee, supplemented by discussion periods in which the members of all honor committees participate. The indoctrination in Honor is designed to facilitate the adjustment of new cadets to the standards of Honor required at Norwich and to illustrate for them the proper application of the principles of honor in cadet life. At the end of the indoctrination period each cadet is given a written examination on the Honor Code.

Freshmen and new cadets are placed on a probationary status during their first semester in residence. During the probationary period a cadet who is found guilty of violating the Honor Code may be suspended from the University, or less severely punished, depending upon the circumstances surrounding the case.

Violation of the Honor Code

A violation of the Honor Code is defined as any act of lying, cheating, attempting to evade the truth, conspiring to deceive, or stealing. Any action which is dishonest or evasive is a violation of both the spirit and the principles of honor. A cadet is either honest or he is not!

A cadet who is found guilty of stealing or aiding a theft may be promptly DISMISSED from Norwich University. In the determination of guilt, the actual or intrinsic value of the object stolen is of no consequence, for the important fact to be considered is that all cadets must respect the property of others.

The appropriation of the property of another, without his or her consent, although the intent to permanently keep that property is not present or can not be proven, is nevertheless a violation of the Honor Code.

No individual may assume authority for disregarding an honor violation. All violations which occur must be promptly reported, investigated, and heard, so that justice may be served. A cadet who is innocent of violating the Code has nothing to fear in an investigation or hearing, and a cadet who is guilty of violating the Code does not deserve to have his actions overlooked so that he may continue to disgrace the Corps of Cadets.

Investigations of Alleged Honor Violations

Honor violations which are reported to any member of the Honor Committee are promptly investigated by members of the Corps Honor Committee. The purpose of such investigation is to gather facts and evidence surrounding an alleged violation. Investigations are conducted in a strictly confidential manner so that unfounded incriminations may not hurt innocent persons.

Upon completion of the investigation all evidence is turned over to the Chairman of the Corps Honor Committee and a written report is prepared. The Corps Honor Committee Chairman will determine from the report if there are sufficient grounds for conducting a hearing.

When in the course of an official investigation at Norwich University, a cadet is asked a question concerning himself in a matter of which he has knowledge, he is expected to answer the question in a forthright and honest manner, except as stated below.

Self Incrimination

No person living under the Honor Code at Norwich University may compel any other person living under the Code to incriminate himself or to answer any question which may tend to incriminate him. No person subject to the Honor Code may request a statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected; that if he does make a statement it may be used against him; and that his silence will in no way be held against him. If an individual does wish to testify or make a statement at a hearing, he then subjects himself to cross-examination.

Corps Honor Committee Hearings

Upon completion of the investigation of a reported honor violation, the Chairman of the Honor Committee will designate the time and place for a hearing. As in the investigative phase, the honor committee hearing is completely confidential. The members of the honor committee, the witnesses and the accused are all personally notified when and where to report.

The Chairman will contact the Chairman of the Junior Honor Committee to obtain sophomore and junior members to sit as silent observers of the hearing. A quorum for an Honor Board shall consist of a minimum of two-thirds of those members of the Corps Honor Committee present for duty at the University. The Chairman of the Corps Honor Committee may in unusual circumstances waive the requirement of a

prompt investigation and hearing. In investigations all participants are cautioned not to discuss the matter at hand.

The purpose of a Corps Honor Committee hearing is to determine beyond reasonable doubt if a cadet so accused is innocent or guilty of violating the Honor Code of Norwich University. The responsibility for making that decision rests squarely upon the members of the Corps Honor Committee.

In the conduct of honor committee hearings an accused cadet is informed of the charges against him, he is informed of the punishment for violating the Honor Code, and he is then asked how he pleads. If a guilty plea is entered, the defendant is questioned, witnesses are questioned individually, and all evidence in the case is carefully reviewed. The accused cadet will be present during the entire hearing of witnesses and is always allowed to make a statement in his own behalf.

The accused cadet is allowed to have a counsel of his own choice selected from one of the three committees.

When the Chairman of the Honor Committee feels that all necessary testimony and evidence has been heard, he conducts a closed discussion of the case with the committee, and at the termination of that discussion a secret ballot is taken. To arrive at a finding of Guilty, three-fourths of the members present must vote Guilty.

If an accused cadet is found innocent by the Corps Honor Committee, all charges and proceedings are dropped. If a cadet is found guilty of violating the Honor Code, a report of the hearing is immediately rendered to the Commandant of Cadets.

Disposition of Honor Cases

When the Commandant receives a report from the Corps Honor Committee he immediately summons that cadet before him and explains the procedure whereby he may appeal to the President of the University. If no appeal is desired, the report of the Corps Honor Committee is then reviewed by the Commandant for final action. If the cadet requests an appeal, the Commandant will review the case and cause appeal action to be initiated as explained in the regulations.

The final disposition of cadets found guilty of violating the Honor Code at Norwich University is as follows:

1. A cadet found guilty of stealing will be DISMISSED from Norwich University and the Corps of Cadets.
2. A cadet found guilty of a violation of the Honor Code other than stealing may be suspended from Norwich University and the Corps of Cadets for one year or less severely punished.
3. Any cadet who reports himself as violating the Honor Code for any offense (other than stealing) prior to being reported or confronted by another person may receive punishment less severe than suspension from the University, except where evidence indicates premeditation.
4. Cadets who are found guilty of a second violation of the Honor Code will be DISMISSED from Norwich University and the Corps of Cadets.



NORWICH UNIVERSITY

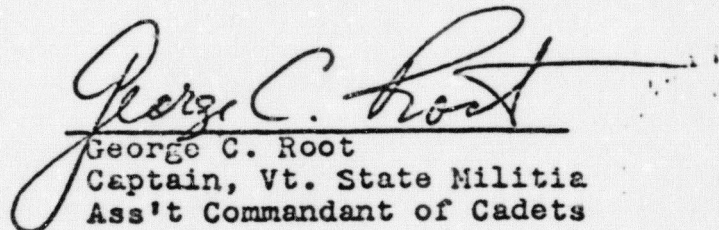
NORTHFIELD, VERMONT 05663
TEL 802-485-5011

OFFICE OF THE COMMANDANT

29 May 1975

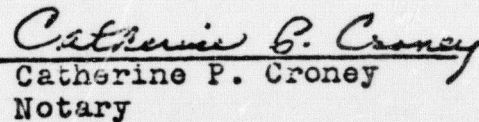
TO WHOM IT MAY CONCERN:

This is to certify that the document titled Transcript of Honor Committee Board (TAPE) re: Lawrence M. Bateman, consisting of forty (40) pages double spaced type is a true transcript of the record of proceedings of that case and I personally typed the document from the recorded tape of the hearing.


George C. Root
Captain, Vt. State Militia
Ass't Commandant of Cadets

State of Vermont
Washington County

Captain George C. Root personally appeared before me, at Northfield, Vt., on 29 May 1975 and attested that the above was true.


Catherine P. Croney
Notary

Commission Expires Feb. '79

Chairman: (The Chairman requested that the statement of Mr. Paul Winberg, Security Officer be read into the record by the Honor Committee Recorder; that statement is at Tab A. Since the second security officer's statement is substantially the same as Winberg's, the accused waved the reading of that statement into the record; the second statement by Mr. Michael Jennings, Security Officer is at Tab B; after the reading of the statement, the Board of the accused asked several questions/before bringing in the first witness.)

Chairman: What happened to the tape player when they opened your trunk? Did they see the tape player?

Accused: I was getting my tape deck out of the trunk.

Chairman: (To Bateman's Advisor.) You might want to advise him.

Advisor: We have a statement which will answer the questions, and we have a person coming in who will explain about the person running away from the Security Guards. Also, we would like to bring in Chris Mersheimer.

Accused: (At this point, Mr. Bateman read his statement into the record -- Tab C.)

(Questioning of Bateman resumes by members of the Board.)

Board Member: How do you explain the gas on the ground?

Accused: Gas on the ground? From which car?

Board Member: From Mersheimer's car?

Accused: No, I can not.

Board Member: Did you empty that can?

Bateman: It was spilled over.

Board Member: But it would be spilled over onto your car. Right?

and threw everything in the trunk and left to come back to school.

Board Member: Could you smell it?

Accused: Yes. I could smell it all the way. That is why I checked when it smelled so bad, because it usually does not smell so bad.

Board Member: How long is the hose that you use for siphoning?

Accused: It is about four feet.

Chairman: (At this point, the ^{Chairman}~~Chairman~~ called in the the first prosecution witness, Michael Jennings, Security Officer.)

Chairman: Would you please reflect upon the night in question.

Witness: Yes. If you want, I can read my statement all over.

Chairman: No. Do you have anything to add to that statement?

Witness: I have a couple of points that I would like to make.

The things that drew my attention that night was number one; why did Bateman tell me at first that he was urinating and then say he was putting the tape player in the trunk? That bothered me at the time. What I did not understand was why would anyone take his tape player out of his car, put it in his trunk and then drive to another parking lot; take the tape player out of the trunk and walk up to his room with it. It seemed kind of strange that someone would not just take it to the original parking spot, take the tape player out and walk up to the room with it. And, the other thing is that there is no trunk lock on his car, and so it was hard to get in and out of. You need to use a screwdriver to get in it.

Board Member: Am I clear that on first sighting of the car, that the trunk was open at that time?

OFFICE OF THE COMMANDANT
NORWICH UNIVERSITY
Northfield, Vermont

SPECIAL ORDERS
NUMBER 95

23 April 1975

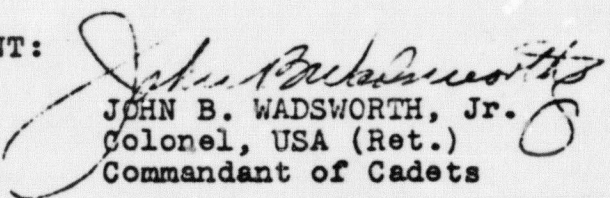
Having been found guilty by The Corps Honor Committee of Violating the Honor Code of Norwich University, specifically, of STEALING gas from another cadet's car, Cadet

PVT BATEMAN, Lawrence M., Co. D Class of 1977

is DISMISSED from Norwich University, effective immediately.

CORPS HONOR COMMITTEE
Norwich University

BY DIRECTION OF THE PRESIDENT:


JOHN B. WADSWORTH, Jr.
Colonel, USA (Ret.)
Commandant of Cadets

Record Entry:
DISMISSED-Honor

DISTRIBUTION:

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AFFIDAVIT OF LORING E. HART

1. I want to make it clear in the case of BATEMAN v. NORWICH UNIVERSITY that I approved the recommendation of the Corps Honor Committee, as concurred in by the Commandant of Cadets, to dismiss Lawrence Bateman from the Norwich Corps of Cadets on 22 April 1975. A special order was published on 23 April 1975, dismissing Lawrence Bateman from the Corps. On 24 April 1975, Lawrence Bateman requested that, even though he was no longer a member of the Corps, I be permitted to finish the semester. I agreed that he could do this provided he resided off campus and came on campus only to attend classes, consult with professors, or to use the library. To these conditions, Bateman agreed. I did not waive or suspend his dismissal from the Corps of Cadets at any time. When he broke this "good faith" agreement by visiting the cadet barracks, which he admitted to me, I had no recourse but to order his immediate separation from the University on 9 May 1975. Lawrence Bateman was not in the Corps of Cadets on 9 May nor was he ever placed in restriction during this period; he was merely given limited access to the campus, to which he agreed. The reference by the plaintiff to due process, regarding "breaking restriction" as a Class I offense not being followed, does not apply in this case, as Bateman was no longer in the Corps and only bound by an agreement between him and me which I made out of sympathy for his situation.

2. With reference to Bateman not having been reminded by the Honor Board that he did not have to make a statement at the hearing: I submit that at no time was he ever required to make a statement. He was told what he "may" do if he wished. He was also thoroughly oriented on that portion of the Honor Code "bible" which is the Cadet Handbook, which states that a cadet at no time can be required or asked to make a statement which would in any way incriminate himself. Cadets are thoroughly indoctrinated in this procedure. I can assure you that Bateman was thoroughly familiar with this provision. In fact, he appeared before the hearing board with a prepared statement which he immediately read into the record. The hearing board had every right, therefore, to question him on it.

Further I sayeth naught.

Dated: 19 July 1975

Loring E. Hart
Loring E. Hart

STATE OF VERMONT
COUNTY, SS.

On the 18th day of July, 1975 personally appeared
Loring E. Hart and made oath to the truth of the foregoing.

Before me, Catherine J. Coney
Notary Public